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राजपत्र, हिमाचल प्रदेश

(असाधारण)

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित

शिमला, वीरवार, 28 फरवरी, 1974/9 फाल्गुन, 1895

GOVERNMENT OF HIMACHAL PRADESH
LAW DEPARTMENT
NOTIFICATION

Simla-2, the 28th February, 1974

No. LLR-D(6)5/74.—The Himachal Pradesh Tenancy and Land Reforms (Amendment) Ordinance, 1974 (Ordinance No. 4 of 1974) promulgated by the Governor, Himachal Pradesh, under clause (1) of Article 213 of the Constitution of India on the 27th February, 1974, is hereby published in the Rajpatra, Himachal Pradesh, for the information of general public.

JOSEPH DINA NATH,
Deputy Secretary.

Ordinance No. 4 of 1974.

THE HIMACHAL PRADESH TENANCY AND LAND REFORMS (AMENDMENT) ORDINANCE, 1974

Promulgated by the Governor of Himachal Pradesh in the Twenty-fifth year of the Republic of India.

An Ordinance to amend the Himachal Pradesh Tenancy and Land Reforms Act, 1972 (Act No. 8 of 1974).

Whereas the Legislative Assembly of Himachal Pradesh is not in session and the Governor of Himachal Pradesh is satisfied that the circumstances exist which render it necessary for him to take immediate action;

And whereas instructions of the President of India to promulgate the Ordinance, have been obtained;

Now, therefore, in exercise of the powers conferred by clause (1) of Article 213 of the Constitution of India, the Governor of Himachal Pradesh is pleased to make and promulgate the following Ordinance:—

Short title,
extent and
commence-
ment.

1. (1) This Ordinance may be called the Himachal Pradesh Tenancy and Land Reforms (Amendment) Ordinance, 1974.

(2) It extends to the whole of the State of Himachal Pradesh.

(3) It shall be deemed to have come into force from the date of commencement of the Himachal Pradesh Tenancy and Land Reforms Act, 1972.

8 of 1974.

Amendment
of section 2.

2. In section 2 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972 (hereinafter referred to as the principal Act), the following amendments shall be carried out, namely:—

8 of 1974.

(a) after clause (3), the following new clause “(3-A)” shall be inserted; namely:—

“(3-A) ‘Bank’ has the same meaning as assigned to it in the Himachal Pradesh Agricultural Credit Operation and Miscellaneous Provisions (Banks) Act, 1972;”;

7 of 1973.

(b) Explanation I occurring below clause (4) (iv) shall be deleted and the figure “II” assigned to explanation II shall be deleted;

(c) in clause (17); —

(i) in sub-clause (i), the words, “recorded as such in the revenue record” shall be deleted;

(ii) in para (a) of sub-clause (ii) the word, “mere” shall be inserted before the word, “mortgagee”;

(iii) in para (b) of sub-clause (ii) for “comma” and the word “or” occurring at the end, a “semi-colon” shall be substituted; and

(iv) para (c) of sub-clause (ii) shall be deleted.

Deletion of
section 12.

3. Section 12 of the principal Act shall be deleted.

4. After sub-section (2) of section 20 of the principal Act, the following sub-section (3) shall be added, namely:—

Amendment
of section
20.

“(3) It shall be an offence for a landowner to collect rent more than the maximum rent prescribed under sub-section (1) and he shall, on conviction by a magistrate, be liable to imprisonment which may extend to six months or punishable with fine which may extend to one thousand rupees or with both.”

5. In section 24 of the principal Act;—

Amendment
of section
24.

(a) for sub-section (5), the following sub-section shall be substituted, namely:—

“(5) It shall be an offence for a landowner to collect from a tenant any rent of which payment has been remitted, or is under suspension, and he shall, on conviction by a magistrate, be liable to imprisonment which may extend to six months or punishable with fine which may extend to one thousand rupees or with both.”;

(b) sub-section (7) shall be omitted.

6. In sub-section (2) of section 25 of the principal Act, for the words “one hundred rupees”, the words, “from rupees five hundred to rupees two thousand” shall be substituted.

Amendment
of section
25.

7. Sub-section (5) of section 30 of the principal Act shall be deleted.

Amendment
of section
30.

8. For section 31 of the principal Act, the following section shall be substituted, namely:—

Amendment
of section
31.

“31. *Relinquishment.*—No relinquishment of a tenancy shall be made by a tenant in favour of a landowner. However, if a tenant wants to make a voluntary surrender of his tenancy land, the same shall be in favour of the State Government. The State Government shall have right to induct any suitable tenant or landless agricultural labourer to the relinquished land in the manner to be prescribed.”.

9. Sections 32 and 33 of the principal Act shall be deleted.

Deletion of
sections 32
and 33.

10. For clause (d) of sub-section (1) of section 34 of the principal Act, the following clauses (d) and (dd) shall be substituted; namely:—

Amendment
of section
34.

“(d) that he holds his tenancy from a person who created such tenancy within a period of six months before he became a member of the Armed Forces or while he was serving in the Armed Forces and wants to cultivate it himself on his ceasing to be a member of the Armed Forces;

(dd) that he holds his tenancy on the land comprising the share of a member of the Armed Forces covered by clause (e) of sub-section (8) of section 104 and who wants to cultivate it himself on his ceasing to be a member of the Armed Forces:

Provided that such person or member of Armed Forces referred to in clauses (d) and (dd) above, as the case may be, shall be entitled to

eject a tenant from such land upto a maximum of five acres in the prescribed manner:

Provided further that a tenant so ejected shall be restored to possession of the land if the landowner after ejecting him does not within one year cultivate it personally:

Provided also that if a tenant holding land from persons mentioned in clauses (d) and (dd) of this sub-section is also a member of the Armed Forces, the provision of first proviso shall not apply and the tenancy shall remain and the ejectment from the tenancy shall only be on the grounds given in clauses (a) to (c) of this sub-section.”.

Amendment
of section
57.

11. Clause (k) of sub-section (1) of section 57 of the principal Act, shall be deleted.

Amendment
of section
58.

12. Clause (i) in Third Group of sub-section (3) of section 58 of the principal Act, shall be deleted.

Amendment
of section
95.

13. At the end of section 95 of the principal Act, for the sign“.” the sign“:” shall be substituted and thereafter the following proviso shall be added, namely:—

“Provided that if the land is subject to a mortgage with a bank the mortgage debt shall be the first charge on the amount payable by the occupancy tenant.”.

Amendment
of section
99.

14. In the end of sub-section (1) of section 99 of the principal Act, for the sign“.” the sign“;” and the word “and” shall be substituted and thereafter the following words shall be added:—

“the composite property as defined in the Evacuee Interest (Separation) Act, 1951, or the property vested in the Central Government under section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954.”.

65 of 1951.)

44 of 1954.)

Substitution
of section
104.

15. For section 104 of the principal Act, the following section shall be substituted, namely:—

“104. *Right of tenant other than occupancy tenant to acquire interests of landowner.*—(1) Notwithstanding anything to the contrary contained in any law, contract, custom or usage for the time being in force, on and from the commencement of this Act, if the whole of the land of the landowner is under non-occupancy tenants, and if such a landowner has not exercised the right of resumption of tenancy land at any time since January 26, 1955, under any laws as in force:—

(i) such a landowner shall be entitled to resume before 1st September, 1974, in the manner prescribed either one and a half acres of irrigated or three acres of unirrigated tenancy land from one or more than one tenants for his personal cultivation in the revenue estate he actually resides or within a radius of 10 kilometres from his residence and the right, title and interest (including contingent interest, if any) of the tenant or tenants, as the case may be, therefrom shall stand extinguished free from all encumbrances created by the tenant or tenants to that extent :

Provided that the landowner shall not be entitled to resume land from a tenant whose tenancy land plus land held by him as a landowner is likely to be reduced by the resumption to less than one and a half acres in case of irrigated or three acres in case of unirrigated land:

Provided further that the landowner shall not be entitled to resume from a tenant more than a quarter of the tenancy land;

- (ii) in case the landowner holds less than one and a half acres of irrigated or three acres of unirrigated land in his personal cultivation, he shall be entitled to resume tenancy land only to make up the land under his personal cultivation to the extent of one and a half acres of irrigated land or three acres of unirrigated land, as the case may be, subject to the other conditions laid down in this section;
- (iii) the right, title and interest in the rest of the tenancy land of the landowner, who is entitled to resume land under clauses (i) and (ii), shall vest in the tenant free from all encumbrances with effect from 1st September, 1974;
- (iv) in case the land under the tenancy is partly irrigated and partly unirrigated and the landowner intends to resume land of both these classes, he shall be entitled to do so in the ratio and manner to be prescribed;
- (v) in the event of any dispute between the landowner and the tenant with regard to the selection of the land for resumption, the first right of selection of land shall be that of the tenant who may exercise this right before 1st September, 1974, in the prescribed manner;
- (vi) in case the tenant fails to exercise his right of selection of land within the period specified in sub-clause (v), the Land Reforms Officer shall determine his share after giving the parties an opportunity of being heard. In such a case also, the tenant shall be given the first choice to select the land.

(2) Where the landowner does not cultivate the land resumed by him under sub-section (1) personally, within one year from taking possession thereof, then such land shall vest in the State Government on payment of an amount at the rate of ninety-six times the land revenue plus rates and cesses and such land shall be disposed of by the State Government in such manner as may be prescribed. In such an event the first right to get such land shall be that of the tenant from whom the land was resumed by the landowner.

(3) All right, title and interest (including a contingent interest, if any) of a landowner than a landowner entitled to resume land under sub-section (1) shall be extinguished and all such rights, title and interest shall with effect from September 1, 1974, vest in the tenant free from all encumbrances:

Provided that if a tenancy is created after the commencement of this Act, the provision of this sub-section shall apply immediately after the creation of such tenancy.

(4) Whenever a dispute arises whether a person cultivating the land of a landowner, is a tenant or not, the burden of proving that such a person is not a tenant of the landowner shall be on the latter.

(5) The landowner whose rights, title and interests are extinguished under this section shall be entitled to receive an amount at the rate of ninety-six times the land revenue plus rates and cesses payable either in lump sum or in such number of instalments not exceeding ten during a period not exceeding five years as may be prescribed:

Provided that if the tenant makes a default in the payment of any instalment of the amount the same shall be recoverable as an arrear of land revenue:

Provided further that if the land for which the amount is to be paid under this section is subject to a mortgage debt from a bank, the mortgage debt will be the first charge on the amount payable for such land:

Provided also that the tenant shall not be liable to pay the amount to the landowner for the acquisition of ownership rights in the tenancy land which is equal in area to that of his tenancy land resumed by the landowner under clauses (i) and (ii) and the extinguishment of rights, title and interests of the tenant on the land resumed by the landowner shall be deemed to be the amount therefor.

(6) Save as otherwise provided in section 114, every decision of the Land Reforms Officer, under this section shall be binding on all persons claiming an interest in a holding notwithstanding the fact that any such person has not appeared or participated in the proceedings before the Land Reforms Officer or any other revenue authority.

(7) The provisions of the foregoing sub-sections shall apply to evacuee land as defined in the Administration of Evacuee Property Act, 1950 to composite property as defined in the Evacuee Interest (Separation) Act, 1951, or the property vested in the Central Government under section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, with effect from such date as the State Government, by notification, in the Official Gazette specify.

31 of 1950

65 of 1951

44 of 1954

(8) Save as otherwise provided in sub-section (9) nothing contained in sub-sections (1) to (6) shall apply to a tenancy of a landowner during the period mentioned for each category of such landowners in sub-section (9) who,—

- (a) is a minor or unmarried woman, or if married, divorced or separated from husband or widow; or
- (b) is permanently incapable of cultivating land by reason of any physical or mental infirmity; or
- (c) is a serving member of the Armed Forces; or
- (d) is the father of the person who is serving in the Armed Forces upto the extent of inheritable share of such a member of the Armed Forces on the date of his joining the Armed Forces to be declared by his father in the prescribed manner.

(9) In the case of landowners mentioned in clauses (a) to (d) of sub-section (8), the provisions of sub-sections (1) to (6) shall not apply,—

- (a) in case of a minor during his minority and in case of other persons mentioned in clauses (a) and (b) of sub-section (8) during their life time;
- (b) in case of persons mentioned in clauses (c) and (d) of sub-section (8), during the period of their service in the Armed Forces subject to

resumption of land by such persons to the extent mentioned in first proviso to clauses (d) and (dd) of sub-section (1) of section 34.”.

16. In section 105 of the principal Act,—

(a) for the word “compensation” or for the words “amount of compensation”, wherever they occur, the word “amount”, shall be substituted;

Amendment of section 105.

(b) for the sign “.” occurring at the end, the sign “:” shall be substituted and thereafter the following proviso shall be inserted, namely:—

“Provided that the amount so determined shall not exceed 50% of the market price of such building and structure.”.

17. (1) The existing section 106 of the principal Act shall be renumbered as sub-section (1) and for the words “amount of compensation” or for the word “compensation” wherever they occur therein, the word “amount” shall be substituted and thereafter the following sub-section (2) shall be added, namely:—

Amendment of section 106.

“(2) If the amount payable relates to the land mortgaged with a Bank or other lending institutions or agency, then the priority of claiming such amount against mortgage money shall be that of the Bank, lending institutions or agency, as the case may be.”.

18. In sections 107, 109, 110 and 111 of the principal Act, for the word “compensation” or for the words “amount of compensation” wherever they occur therein, the word “amount” shall be substituted.

Amendment of sections 107, 109, 110 and 111.

19. In second proviso of section 113 of the principal Act, for the words, brackets and figures, “Land Mortgage Bank or with new banks constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970”, the word “Bank” shall be substituted.

Amendment of section 113.

20. In clause (f) of sub-section (2) of section 118 of the principal Act, for the words, bracket and figures, “new Banks constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970”, the word “a Bank” shall be substituted.

Amendment of section 118.

21. In sub-section (4) of section 119 of the principal Act, for the sign “.”, the sign “:” shall be substituted and thereafter the following proviso shall be added, namely:—

Amendment of section 119.

“Provided that the vestment of land in the State Government shall not affect the rights of a tenant in such land.”.

22. In section 121 of the principal Act, for the existing clause (a) the following clause shall be substituted, namely:—

Amendment of section 121

“(a) landless agricultural labourers and co-operative farms of such labourers and of landless agricultural labourers belonging to Scheduled Castes and Scheduled Tribes;”.

S. CHAKRAVARTI,
Governor.

T. R. HANDA,
Secretary (Law).

Simla:

Dated the 27th February, 1974.

